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MINES AND MINERALS

SURFACE RIGHTS

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of pamphlets on:
Alberta Government
Services.

**Government of the
PROVINCE OF ALBERTA**

SURFACE OWNERS' RIGHTS

The Problem of Surface Rights

Under the common law which was in force for many years in Alberta, as well as other provinces of the Dominion, the title to mines and minerals always included the right of entry and reasonable use of the surface for the purpose of working the minerals, including oil and gas. The owners of minerals had a vested right to use as much of the surface as might be required for their operations without any compensation to the surface owner or without liability except for negligence.

In carrying out a program of oil development, which is so necessary in any country, provision must be made in the public interest whereby those engaged in the development might enter upon the land where development work is to be undertaken. However, the Government is convinced that the owner of the surface is entitled to full compensation as he would be in case a canal, a railway, a highway, a power line, a coal mine or any other thing required in the public interest would cause him any damage or inconvenience.

The Answer to the Problem—

The Right of Entry Act

Many cases came to the attention of the Government where the land owners had suffered great inconveniences and loss without equitable compensation. Laws were passed requiring that the company or individual entitled to work the minerals should compensate the owners of the land. Then in 1947 a new Act,

known as the Right of Entry Arbitration Act, was passed which provided for the setting up of a Board of Arbitration with wide powers to deal with the matter of compensation to surface owners. This Board was set up immediately following the passing of the Act and has dealt with a large number of applications.

Under the Act no operator (meaning any person, company, syndicate or partnership) entitled to remove minerals or any agent thereof engaged in the work of searching for (including drilling), mining, getting, removing or producing minerals shall have the right of entry, use or taking of the surface of any land until he shall have obtained the consent of the owner of such surface rights and the occupant thereof, or shall have become entitled to entry by reason of an Order of the Board.

Where the operator cannot make satisfactory agreement with the farmer or owner of the land, he is required to make application to the Board for the right to enter and carry on his operations and he must supply the owner and the occupants of the land with a copy of the application. The operator may, upon giving all parties concerned three clear days' notice of his application, apply to the Board for leave to enter forthwith upon and use the surface for his purposes and the Board may, if it deems proper so to do grant such application upon the operator providing security sufficient in the opinion of the Board to protect all the rights and privileges of the occupant and owner.

The Board Arbitrates

In dealing with the application the

Board is required to determine what portion of the surface rights the operator requires for the efficient and economical performance of the operations, the exact position thereof, the amount of compensation which shall be payable and the person to whom such payment shall be made and "such other conditions as the Board may deem necessary in connection with the granting of the right of entry."

In determining the amount of compensation the Board may consider:

- (a) the value of the land;
- (b) the amount of land which may be permanently damaged by the operator's operations;
- (c) The adverse effect of the right of entry on the remaining land;
- (d) Compensation for severance;
- (e) compensation for the nuisance, inconvenience and noise which may be caused by or arise from or in connection with the operations;
- (f) Such other factors as the Board may from time to time deem proper, relevant or applicable.

The award and order of the Board made in writing is final and there is no appeal therefrom, but the Board may review, rescind, change, alter or vary any decision or order made by it.

The foregoing should be sufficient to show the intention of the Government, and especially its desire to give the Board all the leeway necessary to deal with applications from a standpoint of equity and justice.

What Has Been Accomplished

The following is a list of examples of rulings given by the Board which are

evidence of the fact that the land owners are receiving fair and generous treatment:

First Year's Payment for One Well	Annual Compensation for One Well
\$1,188.00	\$420.00
1,288.00	428.50
1,551.00	461.00
1,400.00	500.00
2,000.00	700.00

From this information it readily can be seen that from one quarter section on which four wells are drilled the farmer would receive an average of approximately \$6,000 for the first year and an annual compensation of approximately \$2,000, with the right to farm the land not needed for the production of oil and which would be over 130 acres.

In Case of Geophysical Exploration

An operator of geophysical equipment cannot enter upon lands owned by any person — irrespective of whether the person only owns the surface or is the owner of both surface and minerals—without first procuring the consent of the owner and of any person having the right to the use of the surface.

In obtaining the consent the operator must describe accurately to the owner and the occupant where the land is occupied, the line to be followed in the operations and the course to be followed by any automotive equipment. The operator cannot vary such line or course without the further consent to the variation of the persons from whom consent first was obtained.

The surface owner has full authority to refuse to allow the operator to enter

